formance of the contract. Disapproving the doctrine of a constructive service, (*Gandell v. Pontigny,* 4 Campb. 375), the court says that a suit for wages as such is not maintainable, and damages for breach of contract only may be recovered. 7 Ad. & Ell. 544. *Prima facie,* the amount of this recovery is the agreed salary. But the plaintiff must make some reasonable effort to mitigate the damages which the defendant must pay by using reasonable diligence in seeking some other similar employment. This rule is based upon public policy, and tends to prevent a discharged employee from living in idleness while drawing a salary.

Conceding the general rule to be true, that the party aggrieved by a breach of any contract should make every effort to mitigate his damages, it would seem to be only fair that a discharged employee should seek other similar work. And so it has been held by the authorities that the defendant may show that the plaintiff has obtained other employment or might have, with reasonable effort, secured similar employment. *Troy Fertilizer Co. v. Logan,* 96 Ala. 619; *Howson v. Mestayer,* 14 Daly 83. It is true that some cases lay down the rule of liability approved of in the principal case, but on principle and sound policy, this rule should be taken, at the most, as a *prima facie* measure of recovery. *Heim v. Wolf,* 1 E. O. S. (N. Y.) 70; *King v. Staren,* 44 Pa. 99; *Jones v. Jones,* 2 Swan (Tenn.) 605. In all fairness, however, the defendant should be required to assume the burden of proof in an attempt of this nature to decrease his liability. *Van Winkle v. Satterfield,* 58 Ark. 617; *Horn v. Western Land Association,* 22 Minn. 233; *Emery v. Steckel,* 126 Pa. 171; *Barker v. Knickerbocker Ins. Co.,* 24 Wis. 630; *Owen v. Union Match Co.,* 48 Mich. 348; *Williams v. Anderson,* 9 Minn. 50; *Cumberland & P. R. Co. v. Slack,* 45 Md. 161.

In considering the law on this subject in Louisiana, Art. 2720 of the code of that state must be taken into account. This section provides that the discharge of an employee under these circumstances vests in him at once all his unearned salary; and the fact that he has secured other employment makes no difference. *Sherburn v. Orleans Cotton Press,* 15 La. 360. Thus by means of this statute and decision, the very evil and injustice, which other courts have prevented by allowing mitigating defenses, is fostered and encouraged. In such cases the law only aims at compensation, and such defenses tend to obtain it and no more. Any person guilty of a breach of a contract should only be required to pay actual damages. The rule in Louisiana places an employee discharged without cause in the enviable position of drawing a salary while idle or engaging in other employment and perhaps earning double what he is worth, in an economic sense, to the community. Plainly such a rule is contrary to both policy and authority.

STATUTE OF FRAUDS. PAROL MODIFICATION OF CONTRACT.

The Supreme Court of Illinois in a recent decision (*Kissack et al. v. Burke,* 79 N. E. 619) decides the point, *inter alia,* that when one party makes an offer to another in writing, to sell land, with a proviso that it be accepted within a certain time, a parol agreement

to extend such period of acceptance is not void, and in the event that the other party is ready, able and willing to perform his portion of the contract before the expiration of the time verbally stipulated, he may maintain a bill in equity for a conveyance of the land. It was strongly urged by appellees that the extension not being in writing, was entirely inoperative, as offending the Statute of Frauds, and that the rights of the appellant were concluded by his not having accepted the contract in its original form, but they were not sustained in their contention.

Authority may be found on either side of this proposition. At common law, of course, the terms of a written contract cannot be varied, added to or subtracted from by parol evidence. But in case the parties agree to alter it in some essential particular by a *subsequent* agreement, the old contract is discharged, a new one formed, and an action may be maintained upon this new *verbal* contract. But a different question is presented when the original was such as was required to be in writing. Then the substituted agreement is invalid, and the query is whether the original, with a parol modification engrafted upon it, is capable of enforcement.

At first the courts began to differentiate the cases on the ground of whether the particular in regard to which the contract was changed was a material one or not, *Stead v. Dawber,* 10 Adol. & Ell. 57, but this finds no countenance in the later cases. Then there are a number of decisions in which it is held that such a contract is invalid. *Goss v. Lord Nugent,* 2 Nev. & Man. 33, 34; *Harvey v. Grabham,* 5 Adol. & Ell. 61, 73; *Hasbrouck v. Tappen,* 15 John. 200; *Doar v. Gibbs,* 1 Bailey Eq. (S. C.) 371. The following statement is made in *American & Eng. Cyc. of Law* (2 Ed. Vol. 29, 825): "If any alteration is made, so that part of the contract has to be proved by oral evidence, it ceases to be a contract in writing, and is thus exposed to all the evils which the statute was intended to remedy. Within the rule, the time of performance cannot be extended or changed by parol, nor the time within which the contract is to be completed by an acceptance by one of the parties." Thus where a party orally agreed to "carry" goods for a longer time than the contract specified, only the terms of the original contract could be considered as binding upon the parties. *Clark v. Fey,* 121 N. Y. 470. A case arose in Wisconsin on a state of facts analogous to those in the main case (cited *supra*) and it was adjudged that the verbal extension of the time for acceptance could not be considered effective, and it is there stated: "Where the law requires a contract to be in writing in order to bind the parties, and the writing signed and produced in evidence shows that the contract signed by the party who is to be bound by it is to be completed by an acceptance of the other party within a limited time, it is incompetent to show by parol evidence that the time for its completion, by such acceptance, was extended to some other date not mentioned in the contract signed by the party to be bound. The acceptance of the party after the time fixed in the written contract, which is to bind the party signing it, does not show that the contract in writing was the contract between the parties, but an entirely

different contract, and so the contract actually made by an acceptance, after the time fixed in the writing, is a contract not in writing, and so void under the statute." *Atlee v. Bartholomew,* 69 Wis. 43, 50. Numerous cases can be cited which take the opposite ground. See cases cited in 20 *Cyc.,* page 288, note 74; and 23 *Cent. Dig., tit. "Frauds, Statute of,"* Section 284.

In this apparently irreconcilable conflict of decisions, there is one rule to be deduced which will materially aid in harmonizing many of them, and that is:—When the written agreement as altered by the parol modification is declared upon, the action will not be sustained as this would be going in the teeth of the statute, but where the original agreement, and that alone, is the foundation of the action, then the substituted or altered term may be reliéd upon by way of accord and satisfaction, as performance or readiness to perform under the terms of the parol variation is equivalent to performance or readiness to perform under the contract as written; and it is held that proof of such will not constitute a variance from the declaration. *Stearn v. Hall,* 9 Cush. 31; *Whittier v. Dana,* 10 Allen 326; *Browne on Statute of Frauds* (2 Ed.) Section 423, 425, and cases there cited. *Cummings v. Arnold,* 3 Met. 486, holds that in defense to an action on a written contract, the defendant may show that he has performed it according to an oral agreement for a substituted performance, or, being ready to do so, was prevented by an act of the plaintiff. So by this method effect is given to an oral change in the manner or time of performance without contravening the terms of the Statute of Frauds.

The question is often involved in contracts for the sale of goods which come within the purview of the statute and a verbal alteration is made as to the time of performance, etc. In such cases, the courts show much reluctance, and justly so, in allowing the statute to be interposed as a defense and thereby constituting thēmselves innocent means in the perpetration of a fraud. Endeavor is constantly shown to obviate the rigidity of this rule of law and not to extend its scope but rather to mollify its effect. Reasons of expediency and justice, in its widest and primary sense, demand such a course; otherwise that which was intended for the prevention of wrong might become an engine for its accomplishment.

In many cases the equitable doctrine of estoppel may be invoked. Thus it is stated by the Illinois court in the case under consideration: "In equity, a party is not permitted to deceive and defraud another by agreeing to such an extension, and then disregard it, and thus gain an unjust and inequitable advantage," citing *Thayer v. Meeker,* 86 Ill. 470, 473.

The principal decision is not only in accord with a large line of cases, but is also commendable on other grounds.

EXTRADITION. HABEAS CORPUS.

The scope and limitations of the federal laws relating to interstate extradition are quite clearly expounded in *Pettibone v. Nichols,* 203 U. S. 192, decided Dec. 3, 1906. Pettibone was arrested in Colorado in accord with a requisition from the governor of Idaho,